

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

	x	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
v.	:	No. 5:19-cr-00247
NATALIE P. COCHRAN	:	
and	:	
UNITED STATES OF AMERICA	:	Civil Action
v.	:	No. 5:19-cv-00537
REAL PROPERTY SITUATED AT	:	
433 4-H LAKE DRIVE, DANIELS,	:	Date: August 26, 2022
RALEIGH COUNTY, WEST VIRGINIA	:	
together with all	:	
improvements, fixtures, and	:	
appurtenances thereon, and	:	
all leases, rents, and	:	
profits derived therefrom;	:	
	:	
REAL PROPERTY SITUATED AT	:	
219 N. EISENHOWER DRIVE,	:	
BECKLEY, RALEIGH COUNTY, WEST	:	
VIRGINIA,	:	
together with all	:	
improvements, fixtures, and	:	
appurtenances thereon, and all:	:	
leases, rents, and profits	:	
derived therefrom	:	
and	:	
REAL PROPERTY SITUATED AT 210	:	
PARKWOOD DRIVE, BECKLEY,	:	
RALEIGH COUNTY, WEST VIRGINIA	:	
together with all	:	
improvements, fixtures, and	:	
appurtenances thereon, and all:	:	
leases, rents, and profits	:	
derived therefrom	:	
	x	

TRANSCRIPT OF MOTION HEARING HELD  
BEFORE THE HONORABLE FRANK W. VOLK, JUDGE  
UNITED STATES DISTRICT COURT  
IN BECKLEY, WEST VIRGINIA

APPEARANCES:

AUSA KATHLEEN ROBESON  
AUSA JESSICA NATHAN  
United States Attorney's Office  
Suite 4000  
300 Virginia Street East  
Charleston, WV 25301

BRIAN R. BLICKENSTAFF, ESQ.  
Turner & Johns  
808 Greenbrier Street  
Charleston, WV 25311

ZACHARY JAMES ROSENCRANCE, ESQ.  
Bowles Rice  
P. O. Box 1386  
Charleston, WV 25325-1386

DANIEL BURNS, ESQ.  
Pullin Fowler Flanagan Brown &  
Poe  
252 George Street  
Beckley, WV 25801

JOHN A. CARR, ESQ.  
Suite 209  
179 Summers Street  
Charleston, WV 25301

Probation Officer: Jeff Gwinn

Court Reporter: Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Frank W. Volk,  
2 Judge, United States District Court, Southern District of  
3 West Virginia, in Beckley, West Virginia, on August 26,  
4 2022, at 10:14 a.m., as follows:

5 THE COURT: We're here this morning in the Cochran  
6 matter, pardon me, criminal action 5:19-247 and civil action  
7 number 5:19-537.

8 I'd ask counsel to please note their appearances for  
9 the record.

10 MS. ROBESON: Kathleen Robeson and Jessica Nathan  
11 on behalf of the United States.

12 MR. BURNS: Daniel Burns for Larry Jessup, Your  
13 Honor.

14 MR. ROSENCRANCE: Zak Rosencrance for First  
15 Community Bank.

16 MR. BLICKENSTAFF: Brian Blickenstaff for Robert  
17 L. Johns, Chapter 7 Trustee.

18 MR. CARR: John Carr on behalf of the two minor  
19 children. I have been appointed as guardian ad litem.

20 THE COURT: Who is current counsel for Ms.  
21 Cochran, Mr. Schles?

22 MS. ROBESON: That's what I believe, Your Honor.

23 THE COURT: I don't see him in the courtroom.  
24 Does anyone know Mr. Schles' whereabouts? Has he ben  
25 previously excused? Is his appearance necessary? In other

1 words, has the defendant abandoned all right, title and  
2 interest to the property?

3 MS. ROBESON: She already has, Your Honor, so I  
4 don't believe his appearance is necessary.

5 THE COURT: Does anyone wish to be heard on that  
6 matter?

7 Understood.

8 Well, I have read the parties' joint motion to settle.  
9 As you know, the Court invited comments and I've read the  
10 written comments of Mr. Bailey, Ms. McCall, Tom Miller,  
11 Teddy Gray and Chris Davis. And then, also, Donna Bolt, who  
12 I believe the Court has heard in person on at least one  
13 occasion, and I note that there are a number of individuals  
14 in the courtroom this morning.

15 Now, I have some questions of counsel. First of all,  
16 the proceedings in the Bankruptcy Court, did Judge Black  
17 authorize the sale?

18 MS. ROBESON: I will defer to Mr. Blickenstaff,  
19 Your Honor, but I do not believe he has yet.

20 THE COURT: Thank you.

21 MR. BLICKENSTAFF: Your Honor, we were waiting on  
22 this Court to make a determination based on our joint  
23 motion, but the joint motion contemplating a motion to sell  
24 363 free and clear of encumbrances if this Court would allow  
25 the sale to go forward.

1 THE COURT: So, you would still need to go back  
2 before Judge Black if you receive this Court's authorization  
3 for the private sale; is that correct?

4 MR. BLICKENSTAFF: That's correct, Your Honor.

5 THE COURT: Does anyone else wish to weigh in on  
6 that matter?

7 Very good.

8 I suppose my biggest question is why we're not  
9 proceeding with a public sale and an auction process.

10 I will invite you to share your thoughts on that, Ms.  
11 Robeson.

12 MS. ROBESON: Yes, Your Honor. I believe that  
13 this sale is in the best interest of the Government and all  
14 the victims because this is the way to maximize our return  
15 on the property. As this Court knows, the mortgage is  
16 increasing daily. We're not receiving adequate protection  
17 payments from Mr. Jessup or anyone else. So, this debt is  
18 growing and growing.

19 Moreover, Mr. Jessup, if this sale goes through, has  
20 agreed to dismiss his other claims as to the other parts of  
21 the property, which includes the bank account, as well as  
22 the Shelby Cobra. The dismissal of those claims is very  
23 valuable to the Government because that would allow the  
24 final forfeiture order as to these items to move forward and  
25 for us to disburse the funds ultimately to the victims

1 through the restoration process.

2 Furthermore, the interests of the minor children, while  
3 the Government doesn't necessarily concede that they do have  
4 an ownership interest in the property, I at least understand  
5 they have standing and have a very viable claim and this  
6 would dispose of that claim because, if it's not, it could  
7 potentially take us years to figure out what their interest  
8 is and I don't see how the property can be sold while they  
9 still have a colorable interest in the property because I  
10 certainly don't think that they would agree to the sale of  
11 such property. And so, I don't see how an interlocutory  
12 sale could move forward in the forfeiture world, Your Honor.

13 THE COURT: Understood.

14 Any reaction, counsel?

15 MR. BURNS: No, Your Honor. Thank you.

16 THE COURT: Mr. Rosencrance?

17 MR. ROSENCRANCE: Yes, Your Honor. I just want to  
18 note that this process is still going to have to go through  
19 a 363 sale where the sale terms are going to go out on  
20 notice and be subject to upset bids. So, the victims or  
21 anyone else that would want to bid on this property is going  
22 to have the opportunity to do that.

23 THE COURT: But let me ask you, Mr. Rosencrance,  
24 what about the wider community of potential buyers?

25 MR. ROSENCRANCE: Yes, Your Honor. Under 28 U. S.

1 C. 2001 there is a publication requirement, ten days in the  
2 newspaper, so it will be publicized in the newspaper for ten  
3 days in order to comply with that statute.

4 THE COURT: But if we have upset bidders come in  
5 in 363, the 363 process, is it not the case that Judge Black  
6 could expeditiously resolve the claims of the children and  
7 overcome those claims if otherwise appropriate under the  
8 statute; in other words, a free and clear sale?

9 MR. ROSENCRANCE: I think that would be a  
10 possibility, yes, Your Honor.

11 THE COURT: Anything else?

12 MR. ROSENCRANCE: Nothing from me. Thank you.

13 THE COURT: Mr. Blickenstaff?

14 MR. BLICKENSTAFF: No, Your Honor, just that the  
15 trustee would be prepared, as in the normal course in a 363  
16 sale, that if he receives an upset bid he would then  
17 basically conduct a -- an auction at that point in time, set  
18 a date and time for interested parties to come in and make  
19 any upset bids, and sell, of course, the property to the  
20 highest bidder at that time.

21 THE COURT: Would that auction process be widely  
22 disseminated to individuals who may not even now know of the  
23 property's availability?

24 MR. BLICKENSTAFF: I believe that what would end  
25 up happening in that case would be that the trustee would

1 set a date and time for that auction to occur. I guess it's  
2 possible that we could modify the notice requirement that  
3 goes out into the mail that if upset bids are received that  
4 an auction will occur on such date and time so that we could  
5 basically cover that and disseminate it to the wider  
6 population.

7 THE COURT: Mr. Rosencrance?

8 MR. ROSENCRANCE: Yes, Your Honor. I think that  
9 potentially an option we could explore would be to market  
10 the property through Joe R. Pyle or another auctioneer that  
11 has a wide audience. Perhaps that would allay some of the  
12 Court's concerns in regard to marketing the property.

13 THE COURT: And it's not necessary in that  
14 situation to pay a realtor's commission; is that the case?

15 MR. ROSENCRANCE: That would be correct. Your  
16 Honor, my --

17 THE COURT: Would Mr. Pyle take a percentage of  
18 the sale?

19 MR. ROSENCRANCE: Typically with my experience  
20 with Mr. Pyle is that there is a ten-percent buyer's premium  
21 on top of the sale price. That's -- that's their typical  
22 arrangement. That would be something we would need to  
23 discuss.

24 THE COURT: So, that's something that Mr. Pyle  
25 would address with the buyer? It's not something that would



1 come out of the proceeds of the sale?

2 MR. ROSENCRANCE: That's correct, Your Honor.

3 THE COURT: Understood.

4 From the United States' perspective what is the  
5 strength of the claim, other claims that Mr. Jessup has,  
6 that will be disposed of by virtue of this resolution?

7 MS. ROBESON: Your Honor, I do not believe he has  
8 a strong claim to the bank account, quite frankly.

9 As to the Cobra, I also do not believe he has a strong  
10 claim. However, the Shelby Cobra is very expensive to store  
11 and so, the longer it takes -- it's like the mortgage. The  
12 longer it takes to decide the claim the more money that we  
13 are losing in that asset that we're able to distribute to  
14 the victims.

15 THE COURT: And who has primary responsibility for  
16 the adjudication of that claim? Is it something that goes  
17 before Judge Black first or is it entirely in this Court's  
18 jurisdiction?

19 MS. ROBESON: I believe it's entirely in this  
20 Court's jurisdiction, Your Honor.

21 THE COURT: Mr. Blickenstaff, do you differ?

22 MR. BLICKENSTAFF: I'm sorry, Your Honor. I  
23 didn't quite hear that comment. I'm sorry.

24 THE COURT: The Shelby, is it this Court or Judge  
25 Black that will be making the decision on any claims to that

1 vehicle?

2 MR. BLICKENSTAFF: According to the coordination  
3 agreement that we have worked out with the United States  
4 Attorney's Office and if it is approved by this Court then  
5 it would be this Court that would dispose of the Shelby.

6 THE COURT: Well, I'm not sure you can divest a  
7 bankruptcy court of jurisdiction by agreement if it  
8 otherwise has charge of that asset. So, what's everyone's  
9 position on that, either you or Mr. Rosencrance?

10 MR. ROSENCRANCE: Your Honor, I would just note  
11 that the lien was released sometime ago. The bank doesn't  
12 have any interest in this particular vehicle.

13 THE COURT: Is there any other interested party  
14 besides Mr. Jessup or his family that would have interest?

15 MS. ROBESON: No, Your Honor.

16 THE COURT: I suppose that might even be one of  
17 the things that needs to be adjudicated based on this claim,  
18 or not?

19 MS. ROBESON: I'm sorry, Your Honor. I think I  
20 understand your question, but if I don't, please correct me.  
21 We do need to adjudicate this claim, but after that, I think  
22 that's all. It would be finally forfeited.

23 THE COURT: Understood.

24 Does anyone wish to be further heard or anything  
25 related to the proposal before the Court or any other

1 collateral matter?

2 MR. ROSENCRANCE: Your Honor, I have one other  
3 thing. Under the statute, 28 U. S. C. 2001, it appears that  
4 three appraisals are necessary. So, I would contemplate the  
5 parties' obtaining those three appraisals during the  
6 noticing process and then we would come back to this Court  
7 for a confirmation hearing on a potential order approving  
8 sale.

9 THE COURT: Understood.

10 Anything further?

11 MS. ROBESON: Yes, Your Honor. The United States'  
12 position, while -- while I understand the Court wishes to  
13 hear from the victims and I certainly agree that these  
14 people are victims and we take their rights very seriously,  
15 this process for forfeiture is not something that these  
16 victims have standing in, Your Honor, and we can brief the  
17 issue if you would like. They have a restitution order  
18 which recognizes their losses. That is still standing.  
19 Nothing is going to change that.

20 Forfeiture is regarding ownership of the property and  
21 these individuals do not have an ownership in these specific  
22 pieces of property, Your Honor, and -- oh, go ahead, Your  
23 Honor.

24 THE COURT: What happens to the money from the  
25 sale?

1 MS. ROBESON: Yes, Your Honor. The United States  
2 contemplates applying it to the restitution. Ultimately,  
3 that goes through a process called Restoration, which is  
4 controlled by the Executive Branch. And so, we do  
5 ultimately plan to give the money to the victims. However,  
6 the actual process of the forfeiture is not something that  
7 the victims have standing in, the United States would posit.

8 THE COURT: The victims have at least an inchoate  
9 right to hope for and seek the highest price to be gotten  
10 for the asset.

11 MS. ROBESON: I think that's certainly -- I would  
12 say that's common sense and, of course, we would like that.  
13 However, the victims have no ownership rights to these  
14 specific assets and --

15 THE COURT: That's obviously true.

16 MS. ROBESON: Thank you, Your Honor. And to be  
17 able to fulfill our duties under the law we need to be able  
18 to process forfeitures so that, hopefully, we can give the  
19 victims the most money possible.

20 THE COURT: Understood. But, as you know, under  
21 the statute it's the Court's responsibility about how best  
22 to go about that.

23 Is there anything else that needs to be stated?

24 Very good. I am ready to rule.

25 I would say that the Court cannot under the

1 circumstances authorize the private sale approach. I'm not  
2 satisfied that given the fluidity of the market and the  
3 rapid developments that are taking place therein that the  
4 sale is qualified under that private sale feature of the  
5 statute. And so, it's the Court's belief that an auction or  
6 something of that nature does need to take place. I will  
7 leave that issue in the first instance to Judge Black unless  
8 the parties come back to me for some reason on that, but it  
9 seems to me very sensible, it may not be something that  
10 Judge Black or the parties wish to do, but Mr. Jessup has a  
11 bid out there. If it is a fair bid in the parties'  
12 estimation maybe he is treated as a stalking horse bidder  
13 and we see what comes in thereafter. So then, we hopefully  
14 at least know that the property will bring that amount of  
15 money and perhaps more.

16 But the only matter that's before Court right now is  
17 the authorization of a private sale and I will not be  
18 authorizing that. And I will leave the parties to further  
19 consultation.

20 What I intend to do is to retire this case to the  
21 inactive docket pending further discussions and actions in  
22 the Bankruptcy Court and then, if counsel need to return to  
23 this court for action, I will re-open the proceeding and  
24 restore it to the active docket and take whatever steps are  
25 necessary or required or authorized by law.

1 Anything further?

2 MS. ROBESON: Yes, Your Honor. The United States  
3 would move for a Coordination Agreement to be entered by  
4 this Court and, also, Your Honor, I -- I am sorry if I am  
5 not understanding the Bankruptcy Court's jurisdiction  
6 appropriately, but I believe this Court must rule on Mr.  
7 Jessup's claim.

8 THE COURT: I have. I have ruled on Mr. Jessup's  
9 request for a private sale.

10 MS. ROBESON: His claim as to the Shelby Cobra and  
11 as well as to the bank account, would -- should I file a  
12 motion to get this in front of you again, Your Honor, if you  
13 retire this to the inactive docket?

14 THE COURT: Well, I think it may be well to leave  
15 those claims retired to the inactive docket pending the  
16 adjudication of this much larger controversy involving the  
17 real property because that may have a significant impact on  
18 the final outcome. And so, we're going to sequence things  
19 in that order.

20 Whenever these matters have been resolved in Bankruptcy  
21 Court as to the real property then I would invite you to  
22 seek that relief.

23 I understand you have storage costs. That might be an  
24 incentive to more quickly resolve this matter in Bankruptcy  
25 Court. I do have some experience with 363 sales, as you

1 know, and also auctions. I don't think it's something that  
2 Judge Black will keep you waiting on. And so, we'll  
3 sequence things, again, in that fashion.

4 Anything further?

5 MS. ROBESON: And as to the Coordination  
6 Agreement, Your Honor, are we also waiting for that for this  
7 property to be resolved because the sale of -- or just any  
8 sale of any of the properties is contemplated by the  
9 Coordination Agreement, Your Honor.

10 THE COURT: If the Coordination Agreement in any  
11 way touches assets that are in the Bankruptcy Court, then I  
12 want first for that agreement to be presented to Judge Black  
13 and have his approval.

14 If you present it to Judge Black and he doesn't believe  
15 it's necessary for his approval, then I would invite you to  
16 re-submit it to me, and I will take it up at that time.

17 Anything further?

18 MS. ROBESON: No, Your Honor.

19 THE COURT: Thank you. Court is in recess.

20 (Proceedings concluded at 10:31 a.m., August 26, 2022.)

21

22 CERTIFICATION:

23 I, Ayme A. Cochran, Official Court Reporter, certify  
24 that the foregoing is a correct transcript from the record  
25 of proceedings in the matter of United States of America v.

1 Natalie P. Cochran, et al., Criminal Action No.  
2 5:19-cr-00247 and Civil Action No. 5:19-cv-00537, as  
3 reported on August 26, 2022.

4  
5 s/Ayme A. Cochran, RMR, CRR

September 26, 2022

6 Ayme A. Cochran, RMR, CRR

DATE